

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and HUSS, Inc. (hereinafter "Huss"), 77524 El Duna Court, Suite H, Palm Desert, CA 92211.

I. RECITALS

- (1) The Verification Procedure for In-Use Strategies to Control Emissions from Diesel Engines ("Verification Procedure," California Code of Regulations (CCR), Title 13, Sections 2700-2711) provides at section 2702 that if the Executive Officer of the ARB grants verification of a Diesel Emission Control Strategy (DECS), he or she will issue an Executive Order (EO) to the strategy's applicant identifying the verified emission reduction level and any conditions that must be met for the DECS to function properly. The Verification Procedure itself also places conditions on applicants and diesel emissions control strategies.
- (2) California Vehicle Code (VC) Section 27156 (b) states that no person shall operate or leave standing upon a highway a motor vehicle that is required to be equipped with a motor vehicle pollution control device under Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code or any other certified motor vehicle pollution control device required by any other state law or any rule or regulation adopted pursuant to that law, or required to be equipped with a motor vehicle pollution control device pursuant to the National Emission Standards Act (42 U.S.C. Secs. 7521 to 7550, inclusive) and the standards and regulations adopted pursuant to that federal act, unless the motor vehicle is equipped with the required motor vehicle pollution control device that is correctly installed and in operating condition. **No person shall disconnect, modify, or alter any such required device.**
- (3) The EO DE-06-006-02 issued by ARB to Huss for the FS-MK Series Diesel Particulate Filter specifically states that if the engine is certified with an oxidation catalyst from the original equipment manufacturer, the original equipment diesel oxidation catalyst must be left in place and not removed.
- (4) The Verification Procedure system labeling (CCR, title 13, Section 2706 (j)) requires to include the verified application (on-road versus off-road) to be included in the DECS family name.
- (5) The Verification Procedure (CCR, title 13, Section 2711) states that no person shall sell, offer to sell, or introduce into commerce an ARB verified DECS unless all of the conditions of the governing EO and this Chapter are met.

- (6) VC Section 27156 (c) provides that no person shall install, sell, offer for sale, or advertise any device, apparatus, or mechanism intended for use with, or as a part of, any required motor vehicle pollution control device or system which alters or modifies the original design or performance of any such motor vehicle pollution control device or system. An exemption from Vehicle Code Section 27156 is required before any add-on or modified part can be sold in California. Aftermarket parts exemptions are regulated under CCR, Title 13, Sections 1900 et seq., 2030-2031, 2047-2048, 2200-2207 and 2220-2225 (Aftermarket Parts Regulations).
- (7) If a DECS or the application it is used in does not meet the conditions specified in the Verification Procedure or the applicable EO, it is a violation of the Verification Procedure, and the DECS is not verified for that application, rendering it an illegal, non-exempt add-on part.
- (8) The ARB Enforcement Division staff, with the cooperation of Huss, has alleged certain violations of the Verification Procedure, the applicable EO, the Aftermarket Parts Regulations and of Vehicle Code Section 27156 with respect to Huss' DECS in California that do not conform to the conditions specified in the Verification Procedure and the applicable EO. In particular, these alleged violations involve installing the FS-MK Series Diesel Particulate Filter after removing the original equipment diesel oxidation catalyst and mislabeling an On-Road application as an Off-Road application.
- (9) Health and Safety Code, Sections 39674 (a) and (b) authorize civil penalties for the violation of the programs for the regulation of toxic air contaminants not to exceed one thousand dollars (\$1,000) or not to exceed ten thousand dollars (\$10,000) respectively, for each day in which the violation occurs.
- (10) In order to resolve the violations described herein, Huss has taken, or agreed to take, the actions enumerated below under "TERMS AND CONDITIONS." Further, the ARB accepts this Agreement in termination and settlement of this matter.
- (11) In consideration of the foregoing, and of the promises and facts set forth herein, the parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed violations, and voluntarily agree to resolve this matter by means of this Agreement. Specifically, the ARB and Huss agree as follows:

II. TERMS AND CONDITIONS

In consideration of the ARB not filing a legal action against Huss for the violations referred to above, the ARB and Huss agree as follows:

- (1) Upon execution of this Agreement, the sum of eight thousand, two

hundred and fifty dollars (\$8,250) shall be paid on behalf of Huss as follows:

- \$6,187.50 to the **California Air Pollution Control Fund**.
- \$2,062.50 to the **Peralta Community College District**.
- Checks with the signed settlement agreement shall be sent to:

Mr. Tajinder Gill, Air Resources Engineer
Air Resources Board, Enforcement Division
9480 Telstar Ave., Suite 4
El Monte, CA 91731

- (2) If the Attorney General files a civil action to enforce this settlement agreement, Huss shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs.
- (3) Huss shall not violate any provision of the VC Section 27156.
- (4) Huss shall not violate Aftermarket parts exemption procedures established in CCR, Title 13, Sections 1900 et seq., 2030-2031, 2047-2048, 2200-2207 and 2220-2225.
- (5) Huss shall not violate the Verification Procedure (CCR, Title 13, Sections 2700-2711) or any Executive Orders issued by ARB.
- (6) Huss shall ensure that the terms and conditions specified in the applicable EO are met prior to installing, selling, offering for sale, or advertising any DECS in California.
- (7) Huss shall not violate the system labeling requirements set forth in CCR, Title 13, Section 2706 (j).
- (8) Huss shall comply with the DECS warranty requirements set forth in the CCR, Title 13, Section 2707.
- (9) This Agreement constitutes the entire agreement and understanding between ARB and Huss concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Huss concerning the subject matter hereof.
- (10) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all parties to this Agreement.

- (11) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
- (12) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.
- (13) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.
- (14) SB 1402 Statement

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010) requires the ARB to provide information on the basis for the penalties it seeks (*see Health and Safety Code section 39619.7*). This information, which is provided throughout this settlement agreement, is summarized here.

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in §43024.

The per unit or per vehicle penalty in this case is a maximum of \$1,000 per unit per day for strict liability violations and \$10,000 per unit per day for negligent or intentional violations. The total penalty in this case is \$8,250 that includes \$7,875 for one misinstallation and \$375 for one mislabeled application over an unspecified number of days of violations. This penalty was calculated by considering all factors specified in Health and Safety Code section 43024, including the fact that this is an unintentional violation that Huss corrected while cooperating with the investigation.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.

The penalty provision being applied in this case is Health and Safety Code section 39674 because Huss failed to comply with the Air Toxic Control Measure for In-Use Strategies to Control Emissions from Diesel Engines, Title 13, CCR sections 2700-2710, which was adopted under authority of Health and Safety Code section 39600, et seq.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

The provisions cited above do prohibit emissions above a specified level. However, since the hours of operation of the non-compliant unit involved and its individual emission rate is not known, it is not practical to quantify the excess emissions.

- (15) Huss acknowledges that ARB has complied with SB 1402 in prosecuting or settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health and Safety Code section 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed and has considered and determined that this penalty is being assessed under a provision of law that prohibits the emission of pollutants at a specified level. However, since the hours of operation of the non-compliant unit involved and its individual emission rate is not known, it is not practical for ARB to quantify the excess emissions.
- (16) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.
- (17) The penalty in this case was based in part on confidential business information provided by Huss that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and Huss that ARB does not retain in the ordinary course of business either. The penalty also reflects ARB's assessment of the relative strength of its case against Huss, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Huss may have secured from its actions.
- (18) Now therefore, in consideration of the payment on behalf of Huss to the California Air Pollution Control Fund and the Peralta Community College District, the ARB hereby releases Huss and their principals, officers, agents, predecessors and successors from any and all claims for past violations of the Verification Procedure, the applicable EO, the Aftermarket

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Parts Regulations, and VC Section 27156 alleged in recital paragraph 8.
The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

By: 

Name: James Ryden

Title: Chief Enforcement Division

Date: 9-30-12

Huss, Inc.

By: 

Name: CHRISTIAN BAYER

Title: SECRETARY/COMMERCIAL DIRECTOR

Date: 09/25/2012